



# RESEARCH REPORT

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|-----------------------|---|
| <b>Catalog number</b> | 97010   |
| <b>Date:</b>          | January 16, 1997  |
| <b>Subject:</b>       | Public Defender Staffing  |
| <b>To:</b>            | David R. Smith, County Administrative Officer                               |
| <b>From:</b>          | Sandi Wilson, Chief Resource Officer<br>Christopher Bradley, Budget Manager |
| <b>Prepared By:</b>   | Patrick VanZanen, Fiscal Consultant<br>Ken Refner, Senior Fiscal Consultant |

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## DETAIL

### ISSUE

Is the Maricopa County Public Defender's Office appropriately staffed to address current and projected caseload?

### BACKGROUND

The Maricopa County Indigent Representation department consist of three units; the Public Defender, the Legal Defender, and the Office of Court Appointed Counsel. The Public Defender is the first office assigned in any case in which the defendant has been deemed indigent by the Court. This is because the Public Defender can provide services at the lowest cost to the County. In the event that there are two defendants in a case or some other conflict that prevents the Public Defender from representing the defendant, the Legal Defender is assigned to provide services. However, the Legal Defender is a smaller office that deals principally with major felonies and only a limited number of non-major felonies assigned out of justice courts. Third defendants and further conflicts of interest are assigned to the Office of Court Appointed Counsel. This office administers contracts with private attorneys to represent indigent defendants.

The Public Defender can provide representation for any type of case at an average cost to the County of \$590 while the Office of Court Appointed Counsel provides the same service at a cost of about \$817 per non-major felony case and about \$8,000 for major felonies; both include overhead costs. The Legal Defender's costs are somewhat more than the Public Defender's yet significantly less than OCAC's. The Office of the Legal Defender has not been in operation long enough to develop a true cost per case estimate. A full cost analysis will be completed after the close of FY 1996-97.

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With this information in mind, it is clear that the County should maximize the use of the Public Defender and Legal Defender while limiting the use of contract attorneys. Optimally, the only cases that should not be handled by the Public Defender are those in which there are genuine conflicts of interest. (Note: The Public Defender's calculation of \$590 as the average cost per case **included** major felonies. If they were removed from the calculation, a lower number would be reported for the PD's cost to defend a non-major felony.)

The Public Defender has experienced a growth in service demand as the community has grown and become more populous. Other factors, such as additional police hired by communities within Maricopa County, also increase caseload. In addition to this expected growth, the Public Defender has recently seen a significant increase in caseload due to the County Attorney's effort to eliminate a back-log of pending cases. This back-log reduction was aided by the addition of 29 prosecuter positions to the County Attorney's Office in fiscal year 1996-97. The Public Defender was not staffed at a level to accommodate such an immediate and drastic increase in caseload and, therefore, had to withdraw from 775 adult cases and 350 juvenile cases in September and November of 1996. The Legal Defender's Office had already taken on cases to relieve Public Defender and could not take on any more. Therefore, these cases were passed on to the Office of Court Appointed Counsel to be handled at a higher cost to the County. Under current conditions at the Public Defender's Office, a significant number of additional cases will likely be passed on to contract attorneys

Additional contract costs due to case withdrawals are an added strain to an already tight budget. The Indigent Representation department was likely underfunded in the current fiscal year (FY 1996-97) by approximately \$900,000 dollars. To explain, the Office of Court Appointed Counsel portion of the budget was overrun by \$910,000 last fiscal year (FY 1995-96); none of this overrun was due to cases passed on to the Office of Court Appointed Counsel because of the Public Defender's inability to keep pace with the caseload. Rather, the overrun was due to unavoidable conflicts of interest that had to be handled by contract attorneys; in other words, basic service demands. The FY 1996-97 budget was not increased to accommodate this over-run. However, funding was set aside in the Justice and Jail Population Management Fund to cover such an over-run. Nevertheless, it is reasonable to expect that a similar over-run will occur in this fiscal year (FY 1996-97). Below is the Office of Management & Budget's year end budget projections for the Indigent Representation department. Note that the projection does *not* include the cost or fiscal impact of implementing any recommendations that may result from this report.

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| INDIGENT REPRESENTATION                                 |            |           |            |          |                   |
|---|------------|-----------|------------|----------|-------------------|
| YR-END VARIANCE PROJECTION AS OF NOV. 30, 1996          |            |           |            |          |                   |
|   | CUR BUD    | YTD BUD   | YTD ACT    | YTD VAR  | YR-END VAR        |
| <b>PUBLIC DEFENDER</b>                                  | 15,945,998 | 6,804,003 | 7,033,407  | -229,404 | 0                 |
| <b>LEGAL DEFENDER</b>                                   | 1,906,559  | 810,233   | 724,066    | 86,167   | 30,000            |
| <b>ADMIN &amp; SUPPORT</b>                              | 611,095    | 326,079   | 162,900    | 163,179  | 0                 |
| <b>CONTRACTS ADMIN</b>                                  | 235,333    | 104,182   | 130,803    | -26,621  | -30,000           |
| <b>CONTRACTS</b>  | 4,500,849  | 1,875,358 | 2,488,435  | -613,077 | -2,458,817        |
|   | 23,199,834 | 9,919,855 | 10,539,611 | -619,756 | <b>-2,458,817</b> |
| <b>JUSTICE AND JAIL POP FUNDS SET ASIDE FOR OVERRUN</b> |            |           |            |          | 280,000           |
| <b>YEAR-END PROJECTION</b>                              |            |           |            |          | <b>-2,178,817</b> |

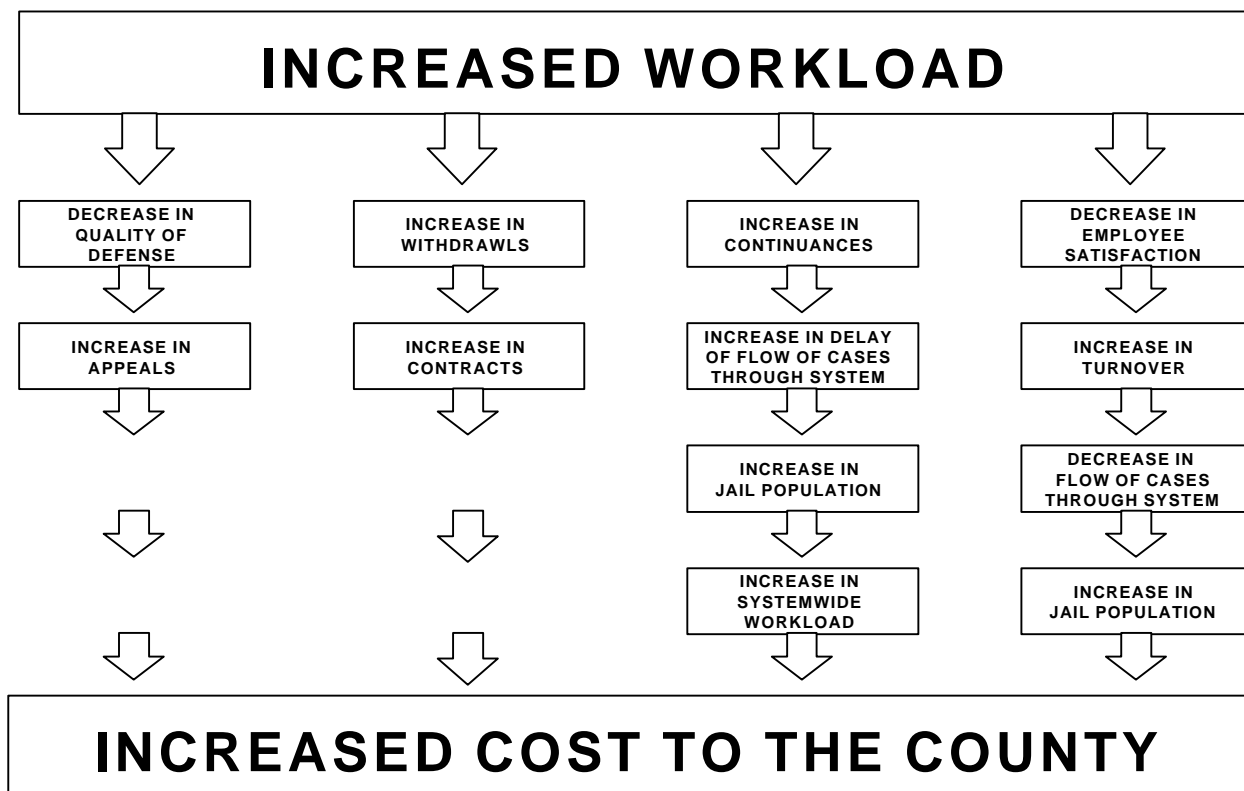
The PD portion of the budget has a YTD variance entirely due to a quarterly rent payment made in advance of due date.

Certainly, the County would have avoided some additional costs if the Public Defender was staffed to accommodate the County Attorney's back-log reduction. However, it would not be fiscally prudent to staff the office to deal with a one-time jump in caseload that will eventually subside. After the temporary increase subsided, the County would be paying a larger staff to handle nearly the same amount of cases as before the temporary jump in caseload. The office would not be operating as cost effectively. In this case, it would be appropriate to pass the withdrawals on to the Office of Court Appointed Counsel at higher cost and not increase staffing levels in the office.

However, as stated earlier, the Public Defender can expect an underlying growth trend; an increase in cases not associated with an attempt to reduce a back-log of cases. The Public Defender should be staffed at a level to keep pace with this growth. Moreover, if the office is appropriately staffed to handle caseloads at any given time, it is likely the Public Defender can absorb a greater number of cases during an unexpected temporary increase in caseload; therefore, limiting additional contract costs.

Increased workload without the appropriate staffing increase affects not only the PD **but the entire criminal justice system**. Ultimately, this leads to increased costs to the County. For example, when the Public Defender's Office cannot resolve cases in a timely manner, defendants spend longer periods of time in County jails. This drives up the overall average length of stay and, therefore, the County jail costs incurred by the Sheriff's Office. The following flowchart illustrates, in general, the impact on the County of increased indigent defense workload without an increase in staff.

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The purpose of this report is to:

- Identify the underlying growth trend aside from the recent increase in case filings by the County Attorney and project future caseloads.
- Determine staffing levels necessary to address current and future caseloads.
- Discuss options to reduce cost and workload.

## DISCUSSION

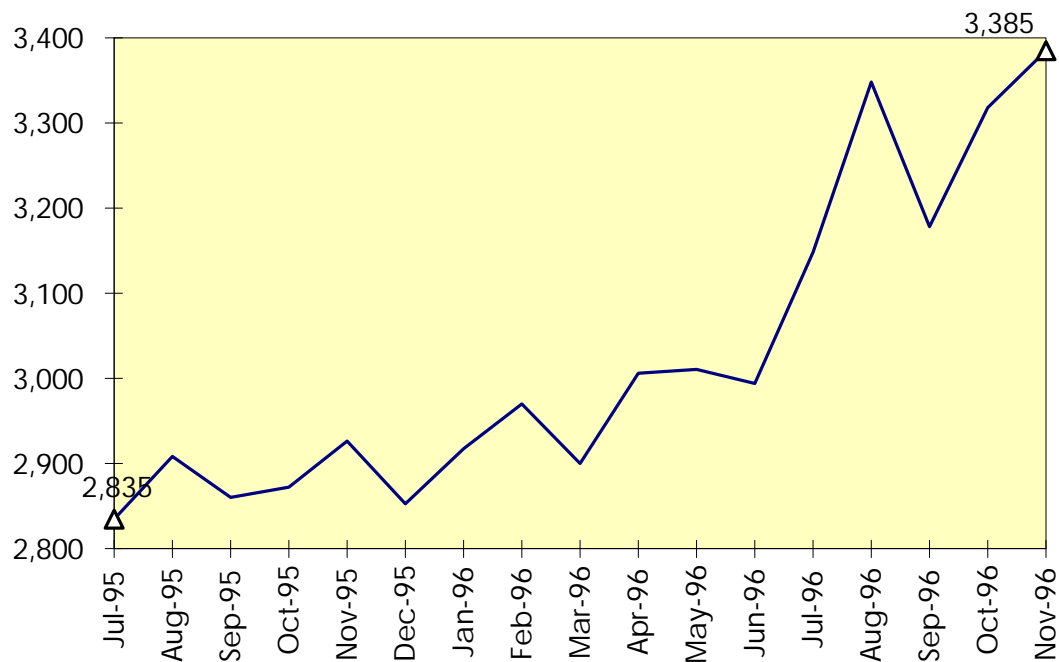
Definitions are provided for the following terms that will be used throughout the report.

|                           |   |
|---------------------------|---|
| <b>-caseload</b>          | number of cases handled by one or more attorneys.   |
| <b>-workload</b>          | all work required to address caseload.  |
| <b>-gross assignments</b> | all cases assigned to the Public Defender's Office before any withdrawals for any reason and "scratched" cases. |

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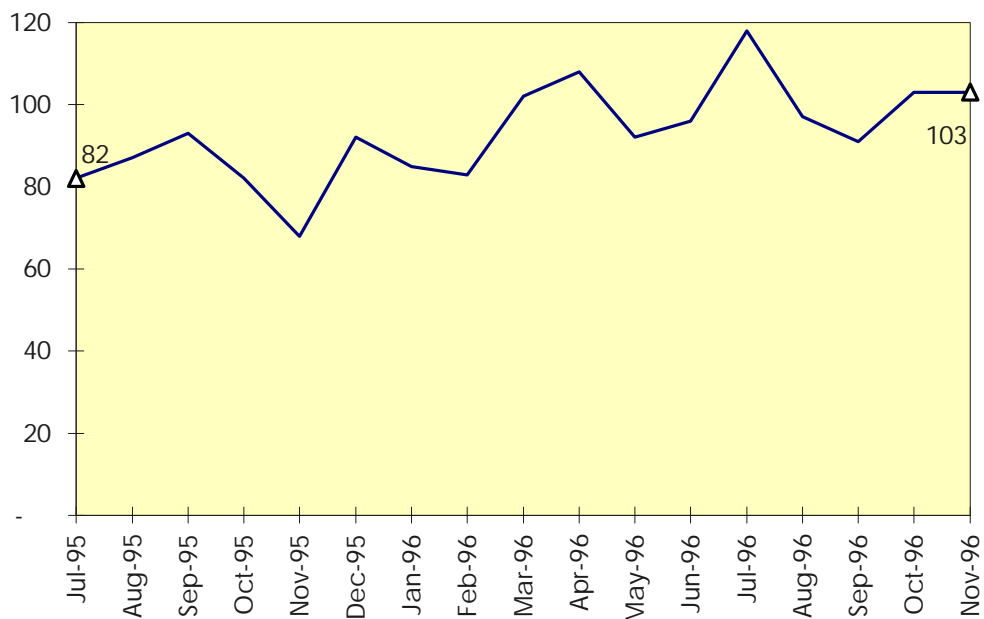
**-adjusted assignments** total cases after withdrawals and "scratched" cases. The Public Defender has an adult trial division and a juvenile division. Most attorneys in the adult division handle both misdemeanors and felonies while others handle only probation revocations. **For the purposes of this report, adult caseload will be measured and discussed in terms of open felonies.** It not necessary, in this report, to account for increases in misdemeanors or probation revocations because they are increasing at a rate similar to felonies. In other words, because there has been no relief in caseload increases in misdemeanors and probation revocations, no staffing resources can be redirected from those areas to felonies, which comprise the majority of work for the office. The following graphs depict actual caseload increases in each of the three areas from July, 1995 to November, 1996.

#### Adult Trial Division -Active Felonies

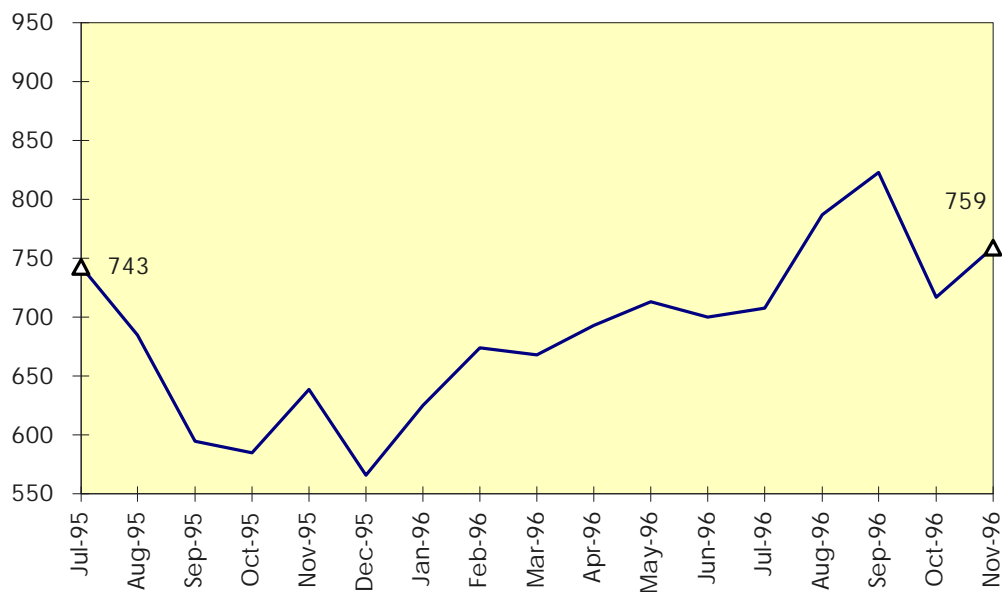


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### Adult Trial Division -Open Misdemeanors



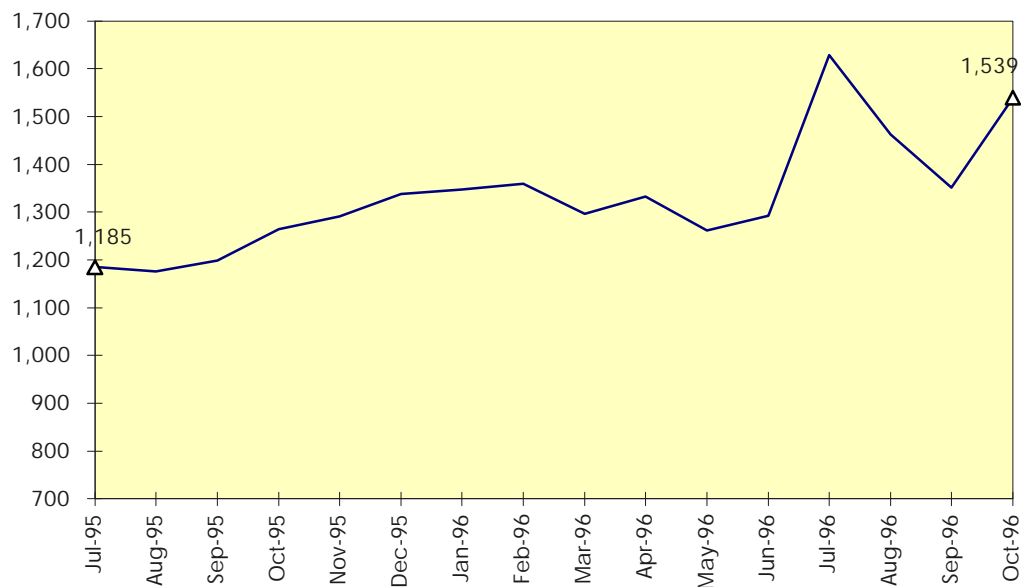
### Adult Trial Division -Probation Revocations



**Juvenile caseload will be measured and discussed as total cases; that is, all types of cases are included.** The following graph depicts juvenile caseload growth from July, 1995 to November, 1996.

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## Juvenile Division -Open Cases

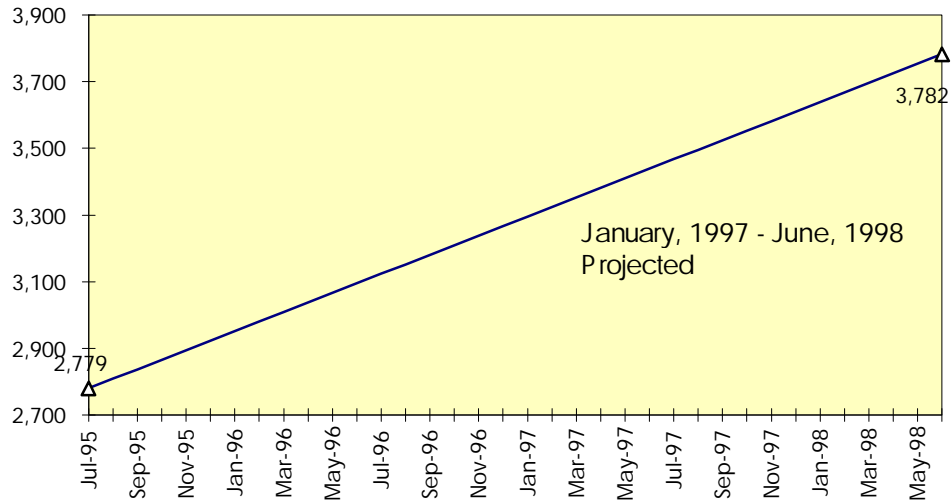


## CASELOAD PROJECTIONS

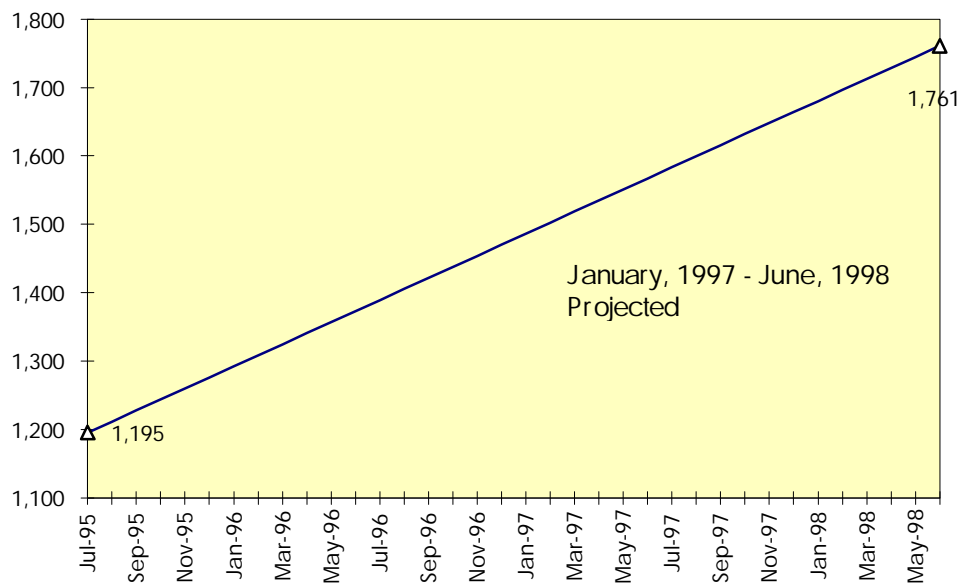
It is clear from the graphs on the previous pages that, since July 1995, the Public Defender has experienced a growth in caseload for both the adult and juvenile divisions. By using that history of actual caseload numbers, the Office of Management & Budget can project future caseload. The graphs below contain the same historical information as the above graphs while including a projection of caseload through June, 1998. In order to make a more accurate projection, the caseload for the month of August, 1996 (for adult), and July, 1996 (for juvenile) was reduced to an average month because caseload was exceptionally high due to the back-log reduction. This is not to say that these were the only months affected by the reduction, which is still impacting the office as of January, 1997.

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### Adult Trial Division -Active Felonies (projected)



### Juvenile Division -Open Cases (projected)

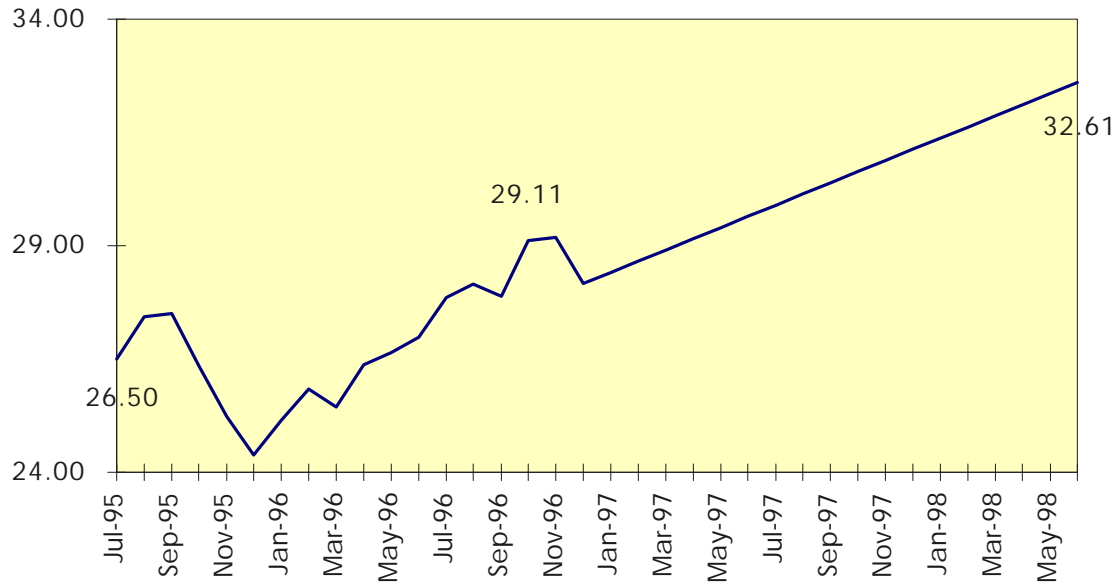


What does this mean to each attorney working in the adult and juvenile trial divisions? The following graphs show the average monthly caseload per attorney with projections through June, 1998.

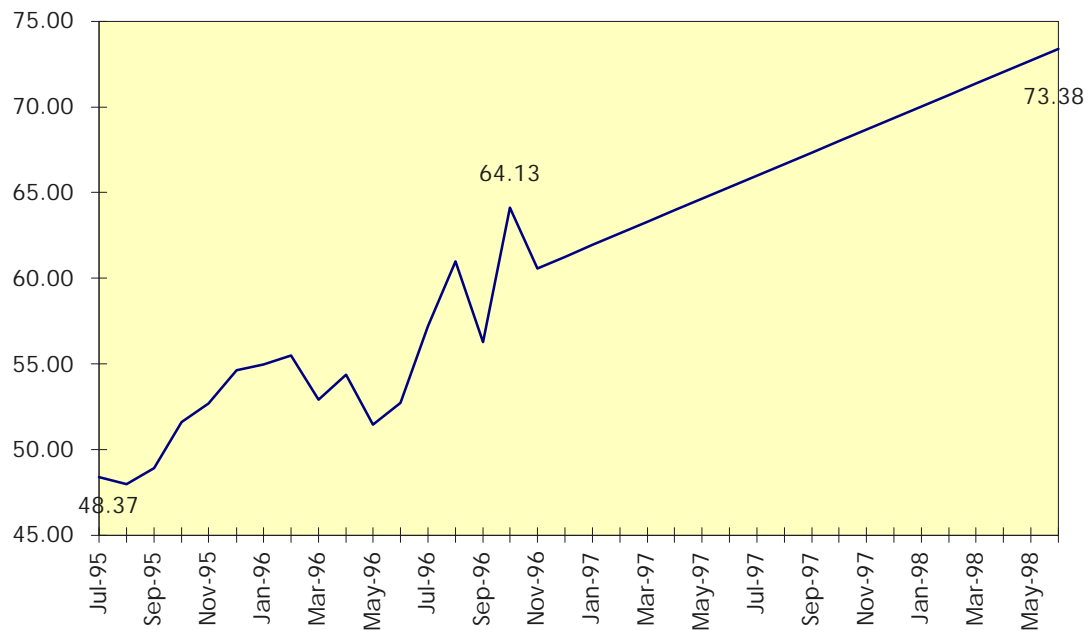


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### Adult Trial Division -Active Felonies Per Attorney (projected)



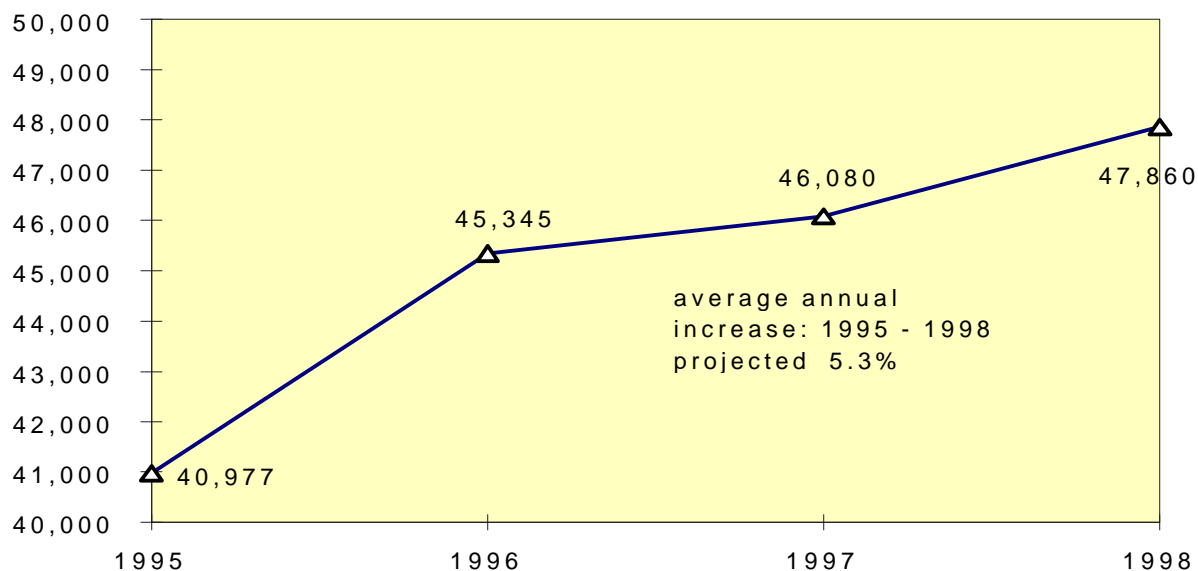
### Juvenile Division -Active Cases Per Attorney (projected)



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Each attorney in the adult trial division has experienced an increase in average monthly caseload of 2.61 cases since July, 1995. If staffing levels remain constant and the projection, on average, is accurate, they will see an additional increase of 3.5 cases per month by June, 1998. Each attorney in the juvenile division has seen an increase in average monthly caseload of 15.76 since July, 1995. If staffing levels remain constant and the projection, on average, is accurate, they will see an additional increase of 9.25 cases per month by June, 1998. The County Attorney's own forecast of increases in case filings seems to support Office of Management & Budget's projection of future growth. The County Attorney's forecast, seen in the graph below, indicates an increase of 5.3% per year.

### Maricopa County Attorney's Office -Cases Filed (projected)

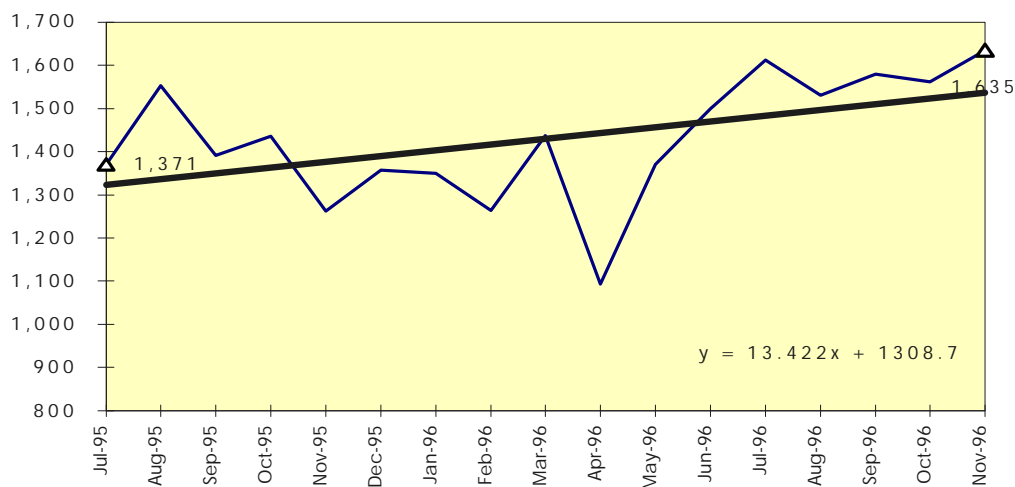


What is the appropriate staffing level to address current caseload? In arriving at an answer, analysts from OMB spent extensive time reviewing court proceedings, interviewing Superior Court judges, observing Deputy Public Defenders at work, reviewing staffing and caseload histories, etc. In July, 1995, the Public Defender was to a level that was adequate to deal with caseload. Each adult division attorney, at that time, had a caseload of 26.5 cases per month while juvenile division attorneys had approximately 50 cases. This staffing level is still applicable for the following reasons and will be used as the benchmark for determining the number of attorneys the Public Defender should have to address current caseload.

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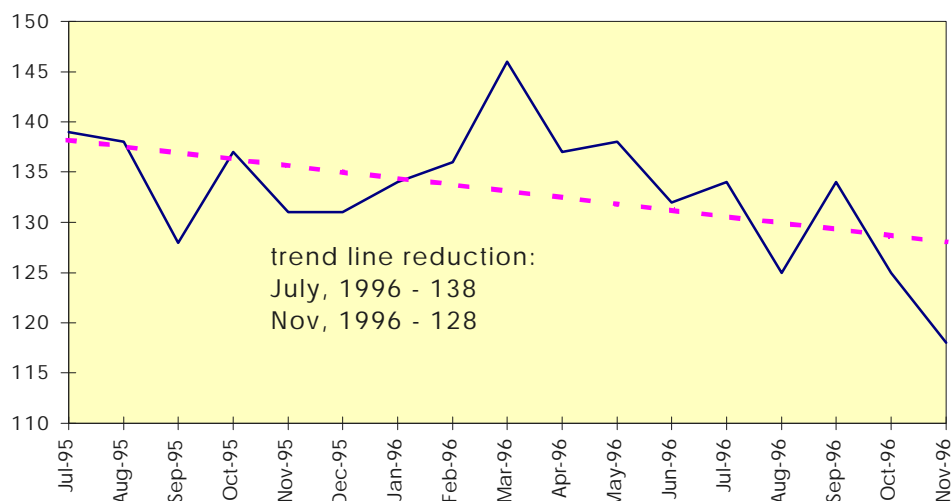
In an attempt to create a more efficient department, the Public Defender undertook a \$650,000 automation project in FY 1995-96 which is now in its final stages. It could be argued that the office is now more efficient because of the automation project and, therefore, each attorney can now carry a higher caseload. Data shows that, in fact, each attorney is working more efficiently and completing more work. The graph below shows that the Public Defender's Office is resolving, on average, 215 more cases per month now than before the automation project.

### Number of Cases Resolved Per Month



Furthermore, the graph below shows that the average length of time to resolve cases has decreased 7.2% since July, 1995. In short, the attorneys are resolving more cases each month and reducing the amount of time it takes to resolve a case.

### Average Number of Days to Resolve a Case



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## Options for Reducing Costs, Caseload, and Workload

Before funding new attorney positions, the County should explore options to reduce gross assignments to the Public Defender's office. Furthermore, steps should be taken to create efficiencies and/or reduce the amount of work necessary to handle a case; such as the automation project mentioned above. Finally, any alternatives to the current method of assigning cases *within* the Indigent Representation department that reduce costs should be implemented.

### 1. Financial Review Unit

Currently, it appears that a number of defendants are given publicly funded representation yet can actually afford private counsel or a portion of their defense. The Pretrial Services Agency of the Superior Court has completed a proposal to institute a Financial Review Unit (FRU). In short, the FRU will closely examine a defendant's financial status to determine indigency. Defendants will be required to help cover the cost of their defense based on their ability to pay. Furthermore, any defendants deemed financially able will be diverted to the Private Attorney Indigent Defense (PAID) program. The program allows defendants to choose private counsel from a list of participating attorneys at a flat cost (to the defendant) of \$750.

Pretrial Services estimates that the FRU program will generate enough revenue to pay for itself. Revenue will come from assessments to the defendants to cover a portion of the cost to the County to provide a Deputy Public Defender. Substantial savings (\$590 dollars for Public Defender cases and \$817 for Office of Court Appointed Counsel cases) will come from those cases that are diverted to the PAID program and away from the Public Defender's office. Pima County has implemented a similar program with a lesser degree of inquiry into the defendant's financial status than the proposed FRU. Still, public defense assignments decreased by approximately 13% annually. The Office of Management & Budget is conservatively estimating a 4% reduction in *adjusted* assignments. That is, open caseload will be reduced by 4% for a cost avoidance of \$681,256. The Office of Management & Budget supports the proposal and will recommend that the program be funded to begin in April, 1997. The following are the estimated costs and savings if the program were implemented in April, 1997;

|                      | FY 1996-97 | ANNUALIZED |
|----------------------|------------|------------|
| COST OF PROGRAM      | \$310,525  | \$267,661  |
| REVENUE              | 69,087     | 267,349    |
| NET COST             | \$241,438  | \$312      |
| COST AVOIDANCE       | 170,392    | 681,568    |
| TOTAL COST AVOIDANCE | -71,046    | 681,256    |

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## 2. Video Conferencing

The Office of the Chief Information Officer has proposed a video conferencing plan to link up, among others, the Public Defender's office and defendants housed in the County jail system. The purposes of the program is to reduce the amount of time Deputy Public Defenders and other staff spend traveling to and from County jails to meet with defendants. The CIO would implement the plan in two stages; one in January 1997 and the second in April 1997. The first stage will install two systems in the Public Defender's downtown office and one in the east Mesa office. The second stage will install another system in the Mesa office and two for the Initial Services section of the Public Defender's office.

A study conducted by the Office of the Chief Information Officer conservatively estimates that 50% of the trips by Public Defender staff to visit inmates will be eliminated. The CIO, with assistance from the Public Defender's office, has calculated that elimination of these trips equates to a savings of \$195,000 per year in staff time. Currently, a request for Justice and Jail Population Management Funds is under consideration by the Office of Management & Budget and the Justice System Coordinator. The following is a summary of costs and savings associated with the program.

|                      | FY 1996-97 | ANNUALIZED |
|----------------------|------------|------------|
| COST AVOIDANCE       | 197,000    | 197,000    |
| COST OF PROGRAM      | \$224,426  | \$137,251  |
| TOTAL COST AVOIDANCE | -27,426    | 59,749     |

## 3. Additional Legal Defender Position

Further savings could be realized by creating an additional position in the Office of the Legal Defender. When the Office of the Legal Defender was created, it was determined that the office would provide representation on only *major* felonies passed on from the PD after it is determined that there is a conflict. Therefore, the Office is relatively small and it would not be cost effective for the attorneys to attend justice court proceedings. As a result, many of the more routine cases involving conflicts were passed on to Office of Court Appointed Counsel at higher contract prices rather than the Legal Defender at a lower cost per case. Since then, the Legal Defender has begun taking cases from selected justice courts in the downtown area and has determined that the office could take on additional cases with the addition of another attorney. This will reduce costs by reducing the number of cases that now go to contract attorneys.

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In the current fiscal year, savings would be realized as a reduction of approximately \$28,000 in the projected Office of Court Appointed Counsel budget overrun. In subsequent fiscal years, the savings would be approximately \$30,000 - \$60,000 depending rent costs. See summary below. Note that the annualized cost includes \$41,000 for office space that is needed for the new position and as well as some currently unfilled positions and future dependency attorneys.

|                   | FY 1996-97 | ANNUALIZED |
|-------------------|------------|------------|
| COST OF CONTRACTS | \$72,500   | \$145,000  |
| COST ALTERNATIVE  |            |            |
| NEW ATTORNEY      | 43,854     | 106,829    |
| RENT & SUPPLIES   |            |            |
| SAVINGS           | \$28,646   | \$33,295   |

## CONCLUSION

The Maricopa County Public Defender can no longer sustain an increase in caseload without additional staff. Deputy Public Defenders are working more efficiently and resolving more cases per month, yet, their open caseloads continue to increase. Further increases will result in case withdrawals and higher contract attorney costs to the County.

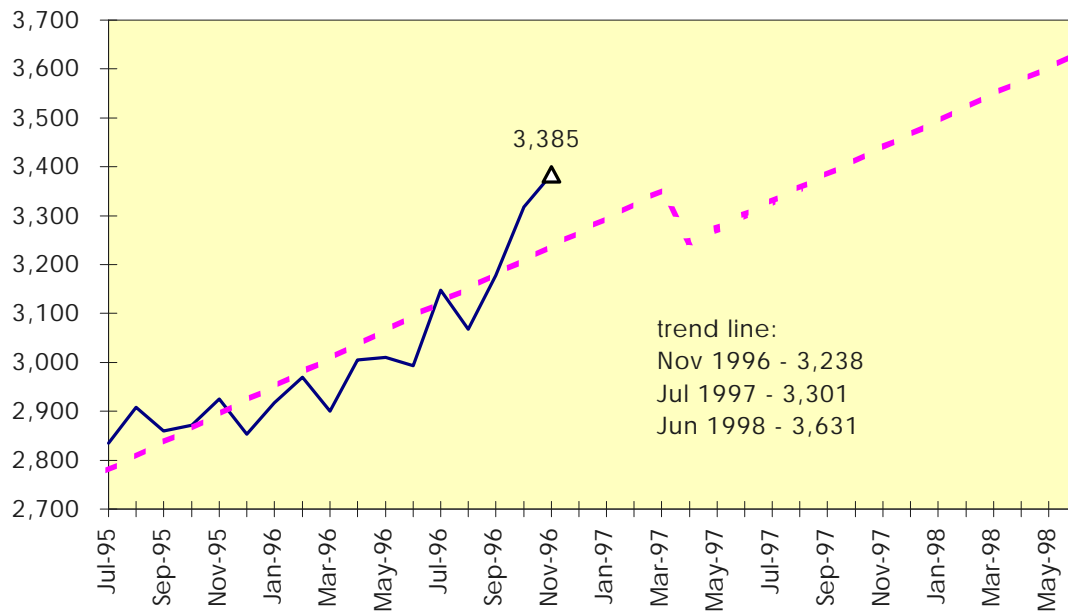
In July of 1995, the Public Defender was staffed at 26.5 adult felony and approximately 50 juvenile open cases per month per attorney. This level is still appropriate and, in fact, if such a level were maintained, it is likely that the department could absorb periods of increased assignments rather than withdraw from cases.

The Office of Management & Budget has determined the number of Deputy Public Defenders needed at this time (adult and juvenile divisions) based on an average increase in cases from July, 1995 until November 1996. It would not be appropriate to take a recent month with a very high or low caseload and divide it by (the determined caseload per attorney of) 26.5 to arrive at the number attorneys currently needed. Rather, a trend line, which accounts for the peaks and valleys in the graph, can be calculated to determine a growth trend. For the adult division, the number cases in November, 1996, as calculated by the trend line, will be divided by 26.5 to arrive at the number of attorneys needed at this time. In determining the juvenile division staffing needs, the November, 1996 trend line caseload will be divided by 50.0. Furthermore, the Office of Management & Budget has projected caseloads, according to the growth trend, as of June, 1997 to determine the number of attorneys needed through the end of FY 1996-97.

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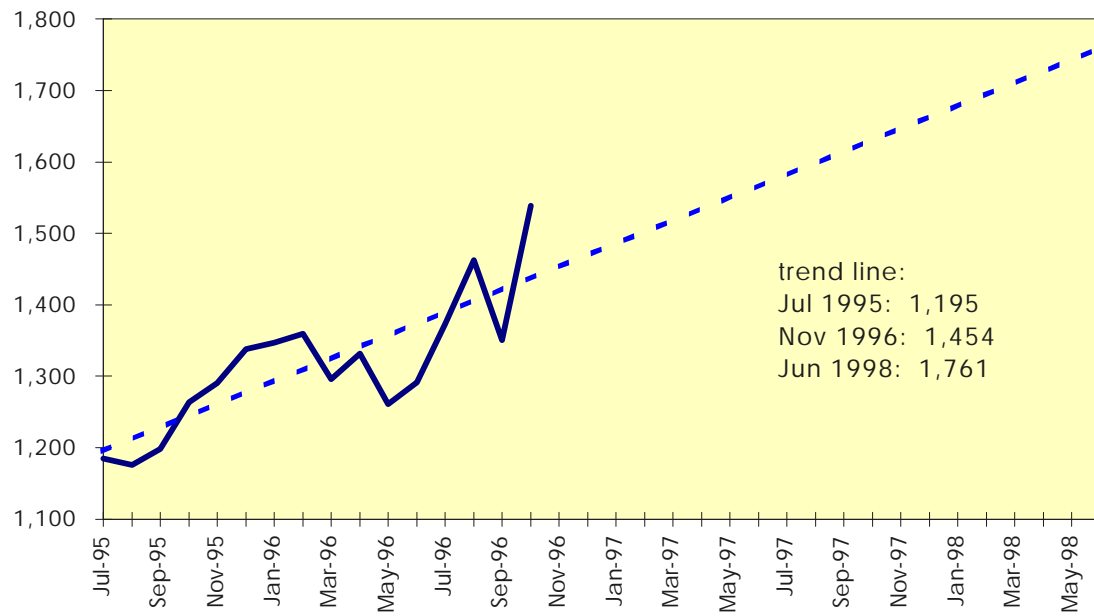
The projection of growth includes the effects of establishing an fully operational FRU in April, 1997. Note that the FRU only affects adult caseloads. The graph below includes the impact of the FRU. The impact of the FRU is depicted as the sudden drop in the dotted trend line in April, 1997.

### Growth Trend and Projection -Adult



### Growth Trend and Projection - Juvenile

|                       |                          |
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From these projections and using the benchmarks of 26.5 average monthly open adult cases and 50.0 average open monthly juvenile cases, we can arrive at the number of attorneys needed in each division at this time and through the remainder of the fiscal year.

## **RECOMMENDATIONS**

### **1. According to current caseload numbers and growth projections, the Public Defender should be funded for the following positions with Justice and Jail Population Management Funds to begin in January, 1996:**

- **8 Attorney III - adult division**
- **6 Attorney II - juvenile division**
- **4 Legal Assistants**
- **2 Administrative Assistants**
- **2 Legal Clerks**
- **1 Chief Investigator\***
- **1 Investigator**

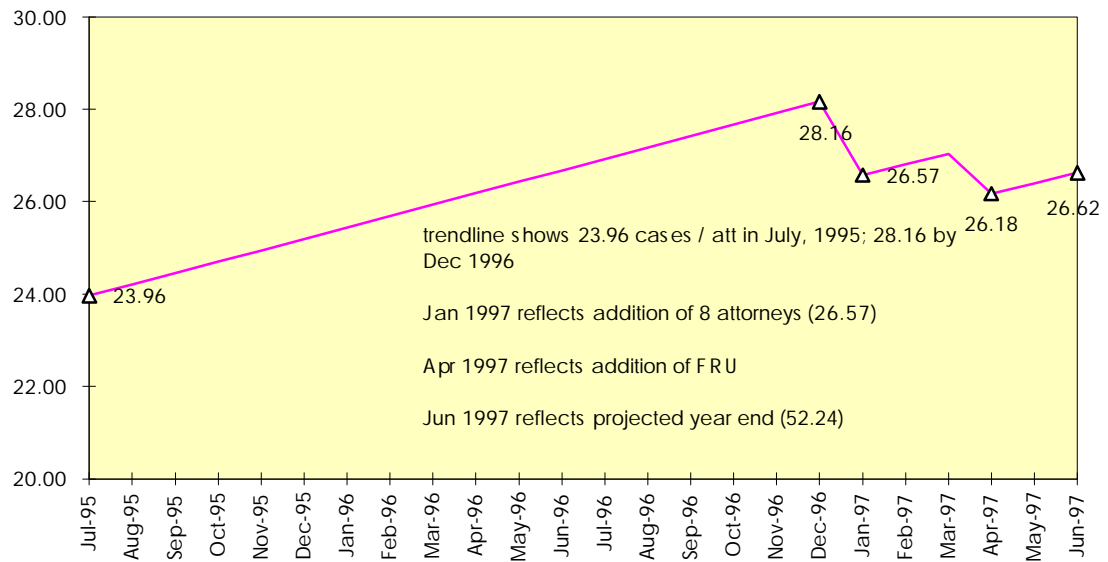
#### **24 Positions**

\* The Chief Investigator position is recommended because the Chief Investigator position currently in the PD's budget has been filled with an attorney in an attempt to address excessive caseload.

**The following graphs depict the average monthly open cases for the adult and juvenile divisions projected through June, 1997 if the above staffing recommendations are implemented.**

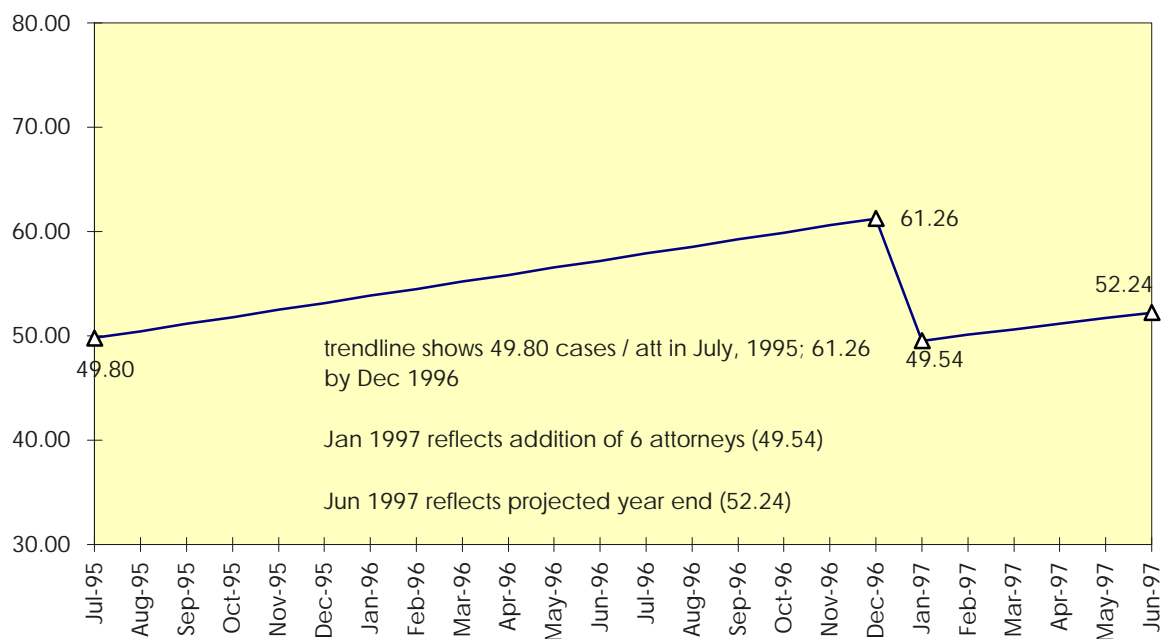
### **Adult Monthly Caseload Per Attorney**

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### Juvenile Monthly Caseload Per Attorney



2. Justice and Jail Population Management Funds should be used to fund the start-up of the Financial Review Unit in April, 1997. The program should be fully funded in the Superior Court's FY 1997-98 budget.
3. Justice and Jail Population Management funds should be used to fund the start-up costs of the video conferencing proposal. The on-going costs should be funded in the FY 1997-98 budget
4. The Legal Defender should absorb the cost of an additional Deputy Legal Defender for the remainder of FY 1996-97. The Office of Management & Budget recommends that the Board of Supervisors fund the annualized cost of the position and rent for office space in FY 1997-98.
5. The Office of Management and Budget should continue to track caseload growth and update projections using caseload statistics provided by the Public Defender. This data will be used to monitor actual caseload versus OMB's projections. Projected caseload growth for FY 1997-98 can be

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considered as a budget issue in conjunction with other caseload issues throughout the criminal justice system.

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Below is a summary of costs for the above recommendations and a revised year-end variance projection assuming that the recommendations are implemented.

#### FINANCIAL SUMMARY OF RECOMMENDATIONS

|                          | FY<br>1996-97 | FY<br>1997-98 |
|--------------------------|---------------|---------------|
| PUBLIC DEFENDER STAFFING |               |               |
| ADULT                    | 404,366       | 682,732       |
| JUVENILE                 | 190,769       | 422,868       |
| LEGAL DEFENDER           | 0             | 106,829       |
| FINANCIAL REVIEW UNIT    | 310,525       | 267,661       |
| VIDEO CONFERENCING       | 224,426       | 137,257       |
| TOTAL                    | 1,130,086     | 1,617,347     |

#### INDIGENT REPRESENTATION YR-END VARIANCE PROJECTION

|   | CUR BUD    | YTD BUD   | YTD ACT    | YTD VAR  | YR-END VAR      |
|---|------------|-----------|------------|----------|-----------------|
| <b>PUBLIC DEFENDER</b>                                  | 15,945,998 | 6,804,003 | 7,033,407  | -229,404 | 0               |
| <b>LEGAL DEFENDER</b>                                   | 1,906,559  | 810,233   | 724,066    | 86,167   | 30,000          |
| <b>ADMIN &amp; SUPPORT</b>                              | 611,095    | 326,079   | 162,900    | 163,179  | 0               |
| <b>CONTRACTS ADMIN</b>                                  | 235,333    | 104,182   | 130,803    | -26,621  | -30,000         |
| <b>CONTRACTS</b>  | 4,500,849  | 1,875,358 | 2,488,435  | -613,077 | -2,458,817      |
|   | 23,199,834 | 9,919,855 | 10,539,611 | -619,756 | -2,458,817      |
| <b>JUSTICE AND JAIL POP FUNDS SET ASIDE FOR OVERRUN</b> |            |           |            |          | 280,000         |
| <b>SAVINGS DUE TO STAFFING RECOMMENDATIONS</b>          |            |           |            |          | 1,232,817       |
| <b>SAVINGS DUE TO ADDITIONAL LEGAL DEFENDER</b>         |            |           |            |          | 28,646          |
|   |            |           |            |          | <b>-917,354</b> |

The PD portion of the budget has a YTD variance entirely due to a quarterly rent payment made in advance of due date.